

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of California-American Water Company (U-210-W), a California corporation, RWE Aktiengesellschaft, a corporation organized under the laws of the Federal Republic of Germany, Thames Water Aqua Holdings GmbH, a corporation organized under the laws of the Federal Republic of Germany, Thames Water Plc, a corporation organized under the laws of the United Kingdom and Wales, and Apollo Acquisition Company, a Delaware Corporation, for an order Authorizing Apollo Acquisition Company to merge with and into American Water Works Company, Inc. resulting in a change of control of California-American Water Company, and for such related relief as may be necessary to effectuate such transaction.

Application 02-01-036
(Filed January 28, 2002)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER AND
ADMINISTRATIVE LAW JUDGE**

This application seeks the Commission's authorization pursuant to Pub. Util. Code § 854 for RWE Aktiengesellschaft (RWE) to acquire California-American Water Company's (Cal-Am) parent corporation, American Water Works, Company, Inc. (AWW) and to merge AWW with Apollo Acquisition Company, thereby acquiring and transferring control of Cal-Am to RWE's subsidiary, Thames Water Aqua Holdings GmbH.

The Commission's Office of Ratepayer Advocates (ORA), the City of Thousand Oaks (Thousand Oaks) and Montara Sanitary District (Montara) filed timely protests. The Commission held a prehearing conference on April 4, 2002.

This ruling confirms the categorization and changes the preliminary determination by concluding that hearings are now necessary. It also sets forth the proceeding's scope and schedule, confirms the principal hearing officer, specifies the time and manner for requesting oral argument, and addresses other procedural issues which will facilitate the efficient processing of this application.

1. Categorization and the Need for Hearings

This ruling confirms the Commission's preliminary categorization in Resolution ALJ 176-3083 of ratesetting. This ruling is appealable under Rule 6.4.

All parties at the prehearing conference agree that hearings may be necessary and it is prudent to schedule them. Resolution ALJ 176-3083 found that hearings are not necessary, and this ruling changes that preliminary determination. Pursuant to Rule 6.5(b), the determination on the need for hearing shall be placed on the Commission's Consent Agenda for approval of that change.

2. Scope of this Proceeding

This proceeding will address the following ultimate issues:

- Should the Commission approve applicants' request for an indirect change in control of Cal-Am and if so, on what terms?
- Should the Commission issue any other orders in connection with its decision in this application?

At the prehearing conference, there was discussion on the Commission's statements in Decision (D.) 00-05-047 (concerning California Water Service Company) regarding the difficulties in that proceeding with an evolving record,

lack of a clear statement of any guarantees, the failure to quantify economic benefits, etc. Also, that decision and the attached dissenting opinion, as well as the standard the Commission adopted in D.01-09-057 (concerning the Citizens/Cal-Am merger) demonstrated there is a need for the parties to anticipate what standards the Commission may desire to apply in future acquisition and merger proceedings, including this one. The parties are urged to heed that guidance and to develop the record accordingly.

In this context, parties may address elements of Pub. Util. Code § 854, as well as other specific issues the Commission may consider to determine if the proposed merger is in the public interest. (See e.g., 4/4/02 prehearing conference transcript at pp. 14-18 and 21-25.) Applicants should also consider the discussion at pp. 28-31 of the prehearing conference transcript in developing their supplemental testimony.

Because several parties raised service quality issues, this ruling provides that parties may present testimony addressing how the proposed merger will affect service quality to California ratepayers. (See Section 854(c)(2).) However, this is not the proceeding to obtain affirmative relief on existing service quality issues. For instance, the Commission will not be resolving the water supply issues raised by Application 97-03-052 (regarding a proposed dam on the Monterey peninsula), nor will it resolve Montara's issues which the Commission has determined are not appropriate to address in a merger proceeding. (See e.g., D.01-09-057)

3. Schedule

Event	Schedule
Applicants' brief on Pub. Util Code § 704	Filed & served by Thursday, April 18, 2002
Responses to Applicants' brief on Pub.	Filed & served by Monday, April 29,

Util. Code § 704	2002
Applicants' written supplemental testimony	Served by May 17, 2002
ORA and other intervenors' testimony	Served by July 1, 2002
Rebuttal testimony	Served by July 15, 2002
Written requests for Closing Argument before the Assigned Commissioner	Served by July 15, 2002
Prehearing Conference	July 24, 2002 at 10:00 a.m., in the Commission's Courtroom, 505 Van Ness Avenue, San Francisco, California
Cross-examination time estimates sent to the ALJ	Served by July 19, 2002 in such a manner that the ALJ receives them by 5:00 p.m. on July 19. ALJ Econome's email is jjj@cpuc.ca.gov and her fax number is 415/703-1723.
Public Participation Hearings	To be determined
Evidentiary Hearings	Monday, July 29 through Friday, August 9, commencing at 10:00 a.m. on Monday July 29 and August 5 and at 9:00 a.m. on the remaining days, and held in the Commission's Courtroom, 505 Van Ness Avenue, San Francisco, California.
Closing argument before Assigned Commissioner	To be determined if timely requests are received by July 15.
Requests for Oral Argument Before the Commission	The last day of evidentiary hearings (currently scheduled for August 9)
Concurrent Opening Briefs	September 6, 2002

Concurrent Reply Briefs	September 20, 2002
Proposed decision issues	No later than December 19, 2002

Our goal is to resolve this case as soon as possible after the case is submitted, and we anticipate that the resolution will not exceed 18 months from the date of the filing of the application, pursuant to Senate Bill 960, Section 13.

4. Principal Hearing Officer and Final Oral Argument

This ruling confirms Commissioner Duque's oral ruling at the prehearing conference that pursuant to Pub. Util. Code § 1701.3, ALJ Econome is designated as the principal hearing officer.

As stated in the schedule, and pursuant to Rule 8(d), parties requesting final oral argument before the Commission should do so no later than the close of evidentiary hearings, currently schedule for August 9, unless directed otherwise by the Assigned Commissioner or ALJ.

5. Service List

At the prehearing conference, we established the official service list which is attached hereto as Appendix A. Parties are required to serve hard copies of all pleadings, testimony, etc. on the Appearance and State Service categories and may, but are not required to, serve such documents on the Information Only list. As a courtesy, the parties shall also electronically serve copies of all documents on everyone on the service list, including information only, who supplied an e-mail address.

6. Exhibits

Parties shall follow the requirements set forth in Appendix B regarding service, correction and identification of, and cross-examination with, exhibits in the hearing room.

7. Ex Parte Communications

Rules 7(c), (f), and (g) and 7.1 apply to this proceeding.

8. Discovery Disputes

If the parties have discovery disputes they are unable to resolve by meeting and conferring, they should raise these disputes with the Commission pursuant to Resolution ALJ-164.

9. Assistance in Participation in Commission Proceedings

The Commission has a Public Advisor who can assist persons who have questions about the Commission's decisionmaking process and how to participate in Commission proceedings. You can contact the Public Advisor's Office by mail at the California Public Utilities Commission, 505 Van Ness Avenue, Room 2202, San Francisco, CA 94102, by email at public.advisor@cpuc.ca.gov or by telephone toll free at (866) 849-8390 (San Francisco) or (866) 849-8391 (Los Angeles).

Therefore, **IT IS RULED** that:

1. This ruling confirms the Commission's preliminary categorization in Resolution ALJ 176-3083 of ratesetting. This ruling is appealable under Rule 6.4
2. This ruling changes the Commission's preliminary determination and finds that hearings are necessary. Pursuant to Rule 6.5(b), this determination on the need for hearing shall be placed on the Commission's Consent Agenda for approval of that change.
3. The schedule and scope of this proceeding are as set forth in Sections 2 and 3.
4. ALJ Econome is the principal hearing officer in this application.
5. The official service list is attached as Appendix A. Parties shall serve hard copies of all pleadings, testimony, etc. on the Appearance and State Service categories and may, but are not required to, serve hard copies on the Information Only list. As a courtesy, parties shall electronically serve everyone on the service

list, who supplied an e-mail address, including information only, with copies of all documents served.

6. Parties shall follow the instructions in Appendix B regarding service, correction and identification of, and cross-examination with, exhibits in the hearing room.

7. Rules 7(c), (f), and (g) and 7.1 apply to this proceeding regarding ex parte communication.

8. Parties shall resolve discovery disputes pursuant to the instructions in Section 8.

Dated April 11, 2002, at San Francisco, California.

/s/ HENRY M. DUQUE

Henry M. Duque
Assigned Commissioner

/s/ JANET A. ECONOME

Janet A. Econome
Administrative Law Judge

APPENDIX A SERVICE LIST

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(END OF APPENDIX A)

APPENDIX B

EXHIBITS

Service of Exhibits

Paper copies of all prepared written testimony shall be served on all appearances and state service on the service list, as well as on the Assigned Commissioner's office and on the Assigned ALJ. Electronic copies shall be served on the entire service list, including information only. Do NOT file prepared written testimony with the Commission's Docket Office. (Such testimony becomes part of the record only after it is admitted into evidence.)

Identification of Exhibits in the Hearing Room

Each party sponsoring an exhibit shall, in the hearing room, provide **two copies to the ALJ and one to the court reporter**, and have at least 5 copies available for distribution to parties present in the hearing room. **The upper right hand corner of the exhibit cover sheet shall be blank for the ALJ's exhibit stamp.** Please note that this directive applies to cross-examination exhibits as well. If there is not sufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the cross-examination exhibit.

Cross-examination With Exhibits

As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction. An exception might exist if parties have otherwise agreed to prior disclosure, such as in the case of confidential documents.

Corrections to Exhibits

Generally, corrections to an exhibit should be made in advance and not orally from the witness stand. Corrections should be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each correction page should be marked with the word "revised" and the revision date.

Exhibit corrections will receive the same number as the original exhibit plus a letter to identify the correction. Corrections of exhibits with multiple sponsors will also be identified by chapter number. For example, Exhibit 5-3-B is the second correction made to Chapter 3 of Exhibit 5.

End of Appendix B

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge on all parties of record in this proceeding or their attorneys of record.

Dated April 11, 2002, at San Francisco, California.

/s/ KE HUANG

Ke Huang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.